

(C. C. A. 10), 73 F. (2d) 716, 721; *Head v. Hargrave*, 105 U. S. 45, 49; *Dayton Power & Light Co. v. Public Utilities Commission*, 292 U. S. 290, 299.

What the Government really seeks is a reversal of the judgment on the ground that the trial court decided an issue of fact contrary to the weight of the evidence. This court has no power to retry the action and to render such judgment as in its opinion should have been rendered by the trial court. *Geiger v. Tramp* (C. C. A. 8), 291 F. 353, 355.

The judgment is affirmed.

On May 28, 1937, the Circuit Court of Appeals denied the Government's petition for a rehearing.

H. A. WALLACE, *Secretary of Agriculture*.

27277. Adulteration of phosphate of lime. U. S. v. 106 Barrels of Phosphate of Lime. Decree of condemnation. Product released under bond to be denatured. (F. & D. no. 35776. Sample no. 31920-B.)

This product contained an excessive amount of fluorine.

On July 17, 1935, the United States attorney for the Eastern District of Michigan, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 106 barrels of phosphate of lime at Detroit, Mich., alleging that the article had been shipped in interstate commerce on or about April 11, 1935, by the Bay Chemical Co., from Weeks, La., and charging adulteration in violation of the Food and Drugs Act. It was labeled in part: "Phosphate of Lime (Calcium) (Dibasic) 325 Mesh Bay Chemical Co. New Orleans, La."

The article was alleged to be adulterated in that it contained an added poisonous and deleterious ingredient, fluorine, which might have rendered it injurious to health.

On June 15, 1937, the Bay Chemical Co. having admitted the allegations of the libel, judgment of condemnation was entered and it was ordered that the product be released under bond conditioned that it be denatured in such manner that it could not be disposed of for human consumption.

H. A. WALLACE, *Secretary of Agriculture*.

27278. Adulteration and misbranding of toffee. U. S. v. Scharf Bros. Co., Inc. Plea of guilty. Fine, \$100. (F. & D. no. 35898. Sample nos. 38867-A, 50593-A, 422-B, 6587-B, 6588-B.)

These candies were all misbranded because the packages contained less than the declared weight, and certain lots were falsely labeled as to the name of the manufacturer. One lot, represented to be "Rum and Butter Toffee", contained fat other than butterfat and imitation rum flavor.

On January 27, 1937, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Scharf Bros. Co., Inc., New York, N. Y., alleging shipment by said company in violation of the Food and Drugs Act as amended between the dates of February 2, 1934, and August 17, 1934, from the State of New York into the States of Ohio, California, and Connecticut of quantities of toffee which was misbranded and a part of which was adulterated. The article was variously labeled in part: "Gala Assorted Toffee 5¼ ounces net Scharf Bros. Co., Inc. New York"; "Park & Tilford Toffee P & T One Pound with wrappers Net Weight 15¼ Ozs. Park & Tilford New York Paris * * * Rum & Butter Toffee"; "Gala Toffees Scharf Bros. Co., Inc., New York 1 lb. net [or "5½ Ounces"]."

A portion of the article was alleged to be adulterated in that a product containing fat other than butterfat and containing artificial rum flavor in imitation of rum had been substituted for rum and butter toffee, which the article purported to be.

All shipments were alleged to be misbranded in that the statements "5¼ ounce Packages", "5¼ Ounces Net", "1 lb. Net", "5½ Ounce packages", and "5½ Ounces" with respect to portions of the article and the statements, "Park & Tilford Toffee P & T one pound with wrappers Net Wt. 15¼ ozs. Park & Tilford New York Paris, Park & Tilford Rum & Butter [or "Caramel", "Mint", "Chocolate", "Licorice", or "Dairy"] Toffee Park & Tilford Assorted Toffee * * * Pound", with respect to certain lots were false and misleading and were borne on the labels so as to deceive and mislead the purchaser since the packages contained less than declared on the label and the lot labeled "Rum and Butter" contained fat other than butterfat and artificial rum flavor, and the lots labeled "Park & Tilford" were not manufactured by Park & Tilford but were manufactured by Scharf Bros. Co., Inc. The so-called rum and butter toffee was alleged to be